

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

27689

**FILE:** B-214194

**DATE:** March 15, 1984

**MATTER OF:** Broadway Cab Co.

**DIGEST:**

1. Where a solicitation contains only a general licensing requirement and does not indicate that a specific state or city business license is required, the contracting officer may place the responsibility for determining compliance upon the prospective contractor. In such circumstances, the contracting officer's affirmative determination of responsibility will not be questioned by GAO even if the contractor does not hold all required business licenses or permits at time of award.
2. Even if agency did not comply with regulatory requirements of FPR before making award after notice of protest, failure is a procedural defect and the validity of award is not affected.

Broadway Cab Co. (Broadway) protests the award of a contract for wheelchair car service to Transportation Plus under invitation for bids (IFB) No. 648-51-84 issued by the Veterans Administration Medical Center, Vancouver Division (VA).

Clause 2(a) of the solicitation states:

"Qualifications: a. Proposals will be considered only from bidders who are regularly established in the business called for and who are financially responsible and have the necessary equipment and personnel to furnish service in the volume required for all the items under this contract. Successful bidder shall meet all operating guidelines of the Federal, State or City codes regarding operations of this type of service."

Broadway contends that Transportation Plus is not qualified to perform the required service under the above

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clause because: (1) it is not established as a handicapped transport company; (2) it does not have adequate equipment and personnel to furnish the required vehicles; (3) it does not have the financial basis to perform the contract requirements; and (4) it may not obtain the required taxicab permits.

For the following reasons, we dismiss the protest.

As to whether Transportation Plus will comply with the taxicab license requirements of the city of Portland, where, as here, a solicitation contains only a general requirement that the contractor comply with applicable laws and does not indicate a specific state or local license which is required, we have held that there is no basis to reject a bidder as nonresponsible, since this is a matter to be resolved by state or local authorities and the contractor. New Haven Ambulance Service, Inc., 57 Comp. Gen. 361 (1978), 78-1 CPD 225. Consequently, the contracting officer satisfied the requirements of federal procurement law when she apparently determined Transportation Plus to be responsible, even if the awardee may not have held all required licenses and permits at the time of award. See Goodhew Ambulance Service, Inc., B-209488.2, May 9, 1983, 83-1 CPD 487, involving another VA solicitation using the identical clause used here. Ace Van & Storage Company, B-210083, December 28, 1982, 82-2 CPD 586. Furthermore, our Office does not review protests against affirmative determinations of responsibility absent a showing of fraud on the part of the procuring officials or that the solicitation contains definitive responsibility criteria which have not been applied. Gillette Industries, Inc., B-205476.2, January 5, 1982, 82-1 CPD 13; Planned Systems International, Inc., B-200860, November 7, 1980, 80-2 CPD 348. Neither has been alleged here. Therefore, we will not review that portion of the protest involving licensing or the remaining points of protest under clause 2(a).

Broadway also contends that it was improper for the contracting officer to make an award when the contracting officer knew or should have known that Broadway would protest the award. Broadway states that there have been no findings made pursuant to Federal Procurement Regulations 1-2.407-8(b)(4) (1964 ed., amend. 68) to indicate that it was necessary or proper for the contracting officer to enter

into an award prior to the resolution of a protest filed in response to a previous solicitation for similar services.

It does not appear that Broadway filed a protest regarding the present solicitation prior to the award date. Therefore, the appropriate regulatory procedures for award in the face of a protest do not apply. In any event, we have held that the making of an award notwithstanding the pendency of the protest is merely a procedural defect which does not affect the validity of an otherwise valid award. See Creative Electric Incorporated, B-206684, July 15, 1983, 83-2 CPD 95; Starline, Incorporated, 55 Comp. Gen. 1160 (1976), 76-1 CPD 365.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel